

# **7 FAM 730 PROTESTS, DISPUTES, AND OFFENSES**

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## **7 FAM 731 PROTESTS**

### **7 FAM 731.1 Legal Right of Seamen to Protest**

By law, American seamen are entitled to present complaints to consular officers abroad regarding provisions, condition of drinking water, the unseaworthiness of their vessel, or continuance of the voyage contrary to agreement (46 U.S.C. 656 and 22 U.S.C. 4193). No seaman may be prevented by the master from coming ashore to present a complaint to the consular officer unless circumstances make such a visit impossible. In that case, the master must advise the consular officer of the seaman's desire for a meeting and at the same time explain why the seaman is not allowed ashore. Upon receipt of that information, the consular officer proceeds to the vessel to hear the complaint and take appropriate action.

### **7 FAM 731.2 Seamen's Rights Under Collective Bargaining Agreements**

In practice, the seaman's right to complain extends to almost any incident aboard ship. However, when seamen complain to the consular officer concerning failure of the master or ship's agents to extend them benefits provided by their collective bargaining agreements, the seamen should be advised that consular officers are required to protect seamen's rights under the statutes but are not authorized to intervene in disputes between parties signatory to collective bargaining agreements. Collective bargaining agreements contain provisions for settlement of disputes upon completion of the voyage. Both operators and unions prefer to use procedures established at domestic ports for this purpose. The taking of statements by the consular officer or the informal use of "good offices" as described elsewhere in this chapter may be appropriate without making the officer a party to the dispute.

### **7 FAM 731.3 Seamen's Right to Survey**

a. When complaints are received in writing from seamen concerning alleged unseaworthiness of a vessel, the consular officer must have an appropriate survey conducted. When a written complaint is signed by the first and second officers or a majority of the crew, the officer shall have a survey made, even in the absence of the master's consent. In almost every port there are representatives of one or more classification societies such as the American Bureau of Shipping, Lloyds of London, or Veritas (see section 7 FAM 702 g). The consular officer arranges for one of these organizations to make and submit a survey. An alternative procedure in the absence of a classification society representative would be to bring the matter to the attention of the local port authorities. These authorities may be able to take action under the International Load Line Convention or under the International Safety of Life at Sea Convention.

b. When a consular officer receives a written complaint signed by 3 or more crew members regarding the provisions or the water aboard their vessel, an examination of the provisions or water is to be made by the consular officer or by a qualified health or medical authority (46 U.S.C. 662). The report is certified by the consular officer and a copy furnished the master for rectification of conditions. This copy will also enable the master to make an entry in the ship's log. A report is also made to the judge of the district court for the district to which the vessel is returning. Expenses for the survey are borne by the master if the complaint appears justified. If the survey reveals that the complaint is without foundation, the master may retain from the wages of the seamen an amount sufficient to cover the cost of the survey. The amount retained from the seamen is divided in proportion to their wages (46 U.S.C. 659 and 663).

## **7 FAM 732 DISPUTES**

### **7 FAM 732.1 Consular Investigation**

When a dispute arises between master and crew of an American vessel, or between seamen aboard the vessel, a consular officer must investigate the circumstances in an appropriate manner whenever so requested.

### **7 FAM 732.2 Arbitration by the Consular Officer**

A consular officer may act as arbiter in any dispute between the master, consignee, agent or owner, and any of the vessel's crew when all parties agree in writing. Any award made by the consular officer in such cases is binding upon each of the parties involved and will be conclusive as to the rights of the parties in any further legal proceedings (46 U.S.C. 651 and 652).

### **7 FAM 732.3 Mediation by the Consular Officer**

Frequently minor disputes may be settled informally by the consular officer acting as mediator rather than as arbiter. A satisfactory solution might be arrived at verbally. An offer to take sworn statements from the parties concerned for reference and for possible future action might be useful. One or all of the disputants may be discharged at the consular officer's discretion, but only in emergency situations when it is apparent that the continued presence of the disputants aboard the same vessel might result in danger to the crew and vessel.

## **7 FAM 733 OFFENSES-COURT JURISDICTION**

### **7 FAM 733.1 Offenses Committed on the High Seas**

Under the general principles of international law, crimes and other offenses committed on the high seas are subject to the jurisdiction of the courts of the country of the vessel's registry. Consular officers shall promptly protest any assertion of jurisdiction by foreign authorities over crimes committed aboard vessels of the United States while on the high seas regardless of the nationality of the offenders. All circumstances of cases of this nature are to be reported immediately to the Department (CA/OCS/CCS).

### **7 FAM 733.2 Offenses Committed in Port or in Territorial Waters**

When an offense is committed aboard a merchant vessel in a port or in territorial waters of a nation other than the nation of the vessel's registry, and when the offense involves the peace of the port, the country in whose waters the offense is committed has jurisdiction under accepted principles of international law. When an offense is aboard a vessel in the waters of a nation other than the country of registry but which does not involve the peace of the port, the offense is usually handled by officers of the vessel and the diplomatic or consular representatives of the country of registry.

### **7 FAM 733.3 Treaty Provisions**

In the case of vessels of the United States, the right to protection against intervention by a foreign government is safeguarded in many instances by a treaty of friendship, commerce, and navigation or by a consular convention between the United States and the foreign state. Where there is no treaty or convention, the foreign country usually refrains from intervening on the basis of comity between nations.

### **7 FAM 733.4 Offenses Committed Ashore**

The courts of a country have sole jurisdiction over offenses committed by seamen while ashore in its ports.

## **7 FAM 734 OFFENSES-CONSULAR RESPONSIBILITY**

### **7 FAM 734.1 Consular Responsibility in Misconduct Cases**

Consular officers should discourage insubordination by every practicable means. The master of a vessel has considerable disciplinary power under the statutes to cope with minor offenses of which seamen may be guilty aboard ship. Masters should be assisted in taking authorized disciplinary measures when the evidence to support such action is considered sufficient. The consular officer may make suitable entries in the ship's log as an official record of recommendations to the master. Seamen guilty of misconduct are not to be discharged unless their actions were caused by cruel treatment or their presence on board ship would constitute a threat to the discipline of the vessel or endanger its operation. In discharging seamen, the consular officer must state the reason on the ship's articles and log and properly certify it (46 U.S.C. 703).

### **7 FAM 734.2 Consular Investigation of Serious Offenses**

In case of a serious crime involving seamen on board vessels of the United States, the consular officer investigates the circumstances. Witnesses should be questioned separately and their signatures obtained on statements as soon as possible after testimony has been given. If it appears advisable in cases of conflict in testimony, a witness may be allowed to make a second affidavit to supplement the first statement.

### **7 FAM 734.3 Reporting Serious Offenses**

Consular officers should inform the Department at once of serious crimes committed by seamen on vessels of the United States on the high seas or in foreign ports or of crimes committed by American seamen ashore in foreign ports. Reports of serious offenses must be factual and include any statements taken. If the consular officer desires to express any personal views, these should be set forth on a separate sheet and marked "For the Department". Inasmuch as these reports are frequently entered in evidence, either in court or in Coast Guard disciplinary hearings, personal opinions are not to be entered in the record. Reports to be entered in evidence must be marked "unclassified". If pertinent confidential information is included, it is to be forwarded in a separate report by telegram with sufficient data included to enable appropriate authorities to take necessary action. A statement saying only that a seaman should be held pending receipt of further details from the post is not sufficient. The report must be sufficiently detailed to furnish grounds for holding the seaman and should serve as a basis for questioning. The "Z" card number of the seaman is to be provided for identification purposes. Affidavits and other related material are then forwarded to the Department in order to make immediate distribution to the agencies concerned. When a report is to be used in court proceedings, at least three extra copies are to be prepared and certified. One of these copies is for the Department, one for the Department of Justice, and one for the master of the vessel transporting the accused for delivery to the authorities upon arrival in the United States, along with the prisoner.

## **7 FAM 734.4 Consular Action in Criminal Cases**

A consular officer may be called upon to assume jurisdiction on behalf of the United States Government in a case involving a serious crime aboard a vessel of the United States which is on the high seas. When this happens, the consular officer assumes jurisdiction for the United States in every case where local authorities will permit it, either by virtue of treaty arrangements or on the basis of comity. When seamen accused of crime come under the jurisdiction of a consular officer, the officer obtains all possible sworn testimony and on the basis of such testimony takes appropriate action. A consular officer has discretionary authority to return a seaman to the United States for trial. Such action is not to be considered unless the offense is of an aggravated character and conviction appears probable. If the circumstances warrant that the accused be sent to the United States for trial, the consular officer may discharge the seaman and apply to the local authorities for means to detain the seaman while in port.

## **7 FAM 734.5 Consular Responsibility in Mutiny Cases**

If one or more members of the crew of a vessel attempt to overthrow the lawful authority of the master with the intent to remove the master from command, the crime of mutiny is committed (18 U.S.C. 2193). A mutiny may be either resistance to the master's authority or actual usurpation of command. Insubordination, disobedience, or violence against the master, unless accompanied by an intent to subvert the master's command, do not constitute mutiny. Consular officers must promptly investigate reports of mutinies on vessels of the United States which arrive in their districts and, when necessary, take measures consistent with treaties and usage to establish order on the vessel and return the alleged mutineers to the United States for trial. If the situation is found to have been caused by cruel treatment of seamen by the officers of the vessel, and if it seems advisable, consular officers may discharge the offending seamen.

Consular inquiries into mutinies are of an administrative rather than a judicial character. Consular officers have wide discretion in deciding whether evidence justifies the detention and return to the United States for trial of persons charged with mutiny. As neither bail nor habeas corpus are available to such persons until they reach the United States, a stronger probable cause may well be insisted on than is required at proceedings before magistrates in the United States (8 Op. Att.Gen 380).

## **7 FAM 735 OFFENSES-COAST GUARD AUTHORITY**

### **7 FAM 735.1 Safety of Life and Property at Sea**

The U.S. Coast Guard is responsible for the safety of life and property at sea on merchant vessels of the United States. Under this obligation, it has a statutory duty to initiate action in the suspension or revocation of documents issued to officers or seamen who are later determined to be incompetent, negligent, or wrongdoers whose conduct is incompatible with safety of life and property on board ship. Some offenses which occur ashore are of concern to the Coast Guard because of the seaman's service to the ship. It is the policy of the U.S. Coast Guard to initiate action in cases of an aggravated nature which directly or indirectly affect the safety of life at sea, the welfare of seamen, and the protection of property aboard ship. These types of cases are: serious crimes of violence on board ship or while ashore, sabotage, fraud in obtaining mariner's licenses or documents, smuggling of aliens into the United States, mutiny, malicious destruction of ship's property, serious cases of theft of ship's property or stores, criminal neglect of duty, misconduct resulting in loss of life or serious bodily injury, and other offenses involving moral turpitude.

### **7 FAM 735.2 Narcotics Cases**

The U.S. Coast Guard considers that a ship is endangered by narcotics traffic regardless of whether it takes place ashore or aboard ship, and whether possession, use, or sale is involved. Accordingly, in these cases a complete report of the charges, the findings and outcome are to be transmitted to the Department in sufficient time to enable the U.S. Coast Guard to be prepared for the seaman's arrival in the United States. Certified copies of the judgments of foreign courts, together with translations, are helpful for U.S. Coast Guard hearing units.

### **7 FAM 735.3 Steps Taken by the U.S. Coast Guard**

The only steps which may be taken by the U.S. Coast Guard in connection with misconduct cases is action against mariners' documents. In cases of misconduct ashore, even in narcotics cases, no attempt is to be made to obtain a seaman's release on the grounds that punishment will be administered by the U.S. Coast Guard. Local laws are enforced by local authorities.

## **7 FAM 736 THROUGH 739 UNASSIGNED**